

**ASSEMBLY BILL**

**No. 17**

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**Introduced by Assembly Members Kehoe**  
**(Coauthors: Assembly Members Chan, Chu, Goldberg, Koretz,**  
**Laird, Leno, Longville, Nation, Steinberg, and Wiggins)**  
**(Coauthors: Senators Burton, Kuehl, and Vasconcellos)**

December 2, 2002

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An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as introduced, Kehoe. State contracts: acquisition of goods or services.

Existing law authorizes the Department of General Services to contract with suppliers to acquire goods and services for state agencies.

This bill would prohibit a state agency from entering into a contract for the acquisition of goods or services with a vendor or contractor who does not offer benefits to domestic partner employees, as defined, that are equal to benefits offered to employees with spouses, except as otherwise specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10295.3 is added to the Public Contract  
2 Code, to read:  
3 10295.3. (a) (1) Notwithstanding any other provision of  
4 law, no state agency may enter into any contract for the acquisition

1 of goods or services with a vendor or contractor who does not offer  
2 benefits to employees with domestic partners that are equal to  
3 benefits offered to employees with spouses, or offer benefits to the  
4 domestic partners of employees equal to benefits offered to  
5 spouses of employees.

6 (2) For purposes of this section, “domestic partner” means one  
7 of two persons who has filed a declaration of partnership with the  
8 Secretary of State pursuant to Division 2.5 (commencing with  
9 Section 297) of the Family Code.

10 (3) These benefits may include, but are not limited to:

11 (A) Bereavement leave.

12 (B) Family medical leave.

13 (C) Health benefits.

14 (D) Membership or membership discounts.

15 (E) Moving expenses.

16 (F) Pension.

17 (G) Retirement benefits or travel benefits.

18 (4) This section does not apply to any contracts executed or  
19 amended prior to July 1, 2004, or to bid packages advertised and  
20 made available to the public, or any competitive or sealed bids  
21 received by the state, prior to July 1, 2004, unless and until those  
22 contracts or property contracts are amended after June 30, 2004,  
23 and would otherwise be subject to this section.

24 (b) Contractors or vendors shall treat as confidential to the  
25 maximum extent allowed by law or by the requirement of the  
26 contractor’s or vendor’s insurance provider, any request by an  
27 employee or applicant for employment for domestic partner or  
28 spousal benefits or any documentation of eligibility for domestic  
29 partner or spousal benefits submitted by an employee or applicant  
30 for employment.

31 (c) After taking all reasonable measures to find a contractor or  
32 vendor that complies with this section, the requirements of this  
33 section may be waived under any of the following circumstances:

34 (1) Whenever there is only one prospective contractor willing  
35 to enter into a specific contract with the state agency.

36 (2) If the contract is necessary to respond to an emergency that  
37 endangers the public health or safety and no entity which complies  
38 with the requirements of this section capable of responding to the  
39 emergency is immediately available.



1 (3) Where the requirements of this section violate, or are  
2 inconsistent, with the terms or conditions of a grant, subvention or  
3 agreement with a public agency or the instructions of an authorized  
4 representative of any public agency with respect to any grant,  
5 subvention, or agreement, provided that a good faith attempt has  
6 been made by the agency to change the terms or conditions of any  
7 grant, subvention, or agreement to authorize application of this  
8 section.

9 (4) Where there are no qualified responsive bidders or  
10 prospective contractors or vendors who could comply with the  
11 requirements of this section and the contract is essential to the state  
12 and state residents.

13 (5) Where the contractor or vendor is providing wholesale or  
14 bulk water, power or natural gas, the conveyance or transmission  
15 of the same, or ancillary services such as spinning reserve, voltage  
16 control, or loading scheduling, as required for assuring reliable  
17 services in accordance with good utility practice, provided that the  
18 purchase of the same may not practically be accomplished through  
19 the standard competitive bidding procedures; and further provided  
20 that this exemption shall not apply to contractors, vendors, or  
21 franchises providing direct, retail services to end users.

22 (d) In the event that the contractor's or vendor's actual cost of  
23 providing a certain benefit for the domestic partner of an employee  
24 exceeds that of providing it for the spouse of an employee, or the  
25 contractor's or vendor's actual cost of providing a certain benefit  
26 for the spouse of an employee exceeds that of providing it for the  
27 domestic partner of an employee, the contractor or vendor shall not  
28 be deemed to discriminate in the provision of benefits if the  
29 contractor or vendor conditions providing the benefit upon the  
30 employee agreeing to pay the excess costs. In addition, in the event  
31 a contractor or vendor is unable to provide a certain benefit,  
32 despite taking reasonable measures to do so, the contractor or  
33 vendor shall not be deemed to discriminate in the provision of  
34 benefits if the contractor provides the employee with a cash  
35 payment equal to the amount that the employee pays to provide  
36 that benefit to the spouse of an employee.

37 (e) If a vendor or contractor does not discriminate in the  
38 provision of benefits between employees with spouses and  
39 employees with domestic partners, a vendor or contractor may do  
40 any of the following:

1 (1) Elect to provide benefits to individuals in addition to  
2 employees' spouses and employees' domestic partners.

3 (2) Allow each employee to designate a legally domiciled  
4 member of the employee's household as being eligible for  
5 benefits.

6 (3) Elect not to provide benefits to employees' spouses or to  
7 employees' domestic partners.

8 (f) This section shall be construed so as not to conflict with  
9 applicable federal laws, rules, or regulations. In the event that a  
10 court or agency of competent jurisdiction holds that federal law,  
11 rule, or regulation invalidates any clause, sentence, paragraph, or  
12 section of this code or the application thereof to any person or  
13 circumstances, it is the intent of the state that the court or agency  
14 sever that clause, sentence, paragraph, or section so that the  
15 remainder of this section shall remain in effect.

